

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

UNITED STATES OF AMERICA,)
 Complainant,)
)
v.)
)
SPRINGS WASH ONE, d.b.a.)
AUSTIN NEVADA CAR WASH,)
 Respondent.)

8 U.S.C. 1324a Proceeding

CASE NO. 90100278

ORDER OF DISMISSAL-SETTLED

E. MILTON FROSBURG, Administrative Law Judge

Appearances: Weldon S. Caldbeck, Esq.,
 for the Immigration and
 Naturalization Service.
 Frederic M. Wise, Esq.,
 for Respondent.

Procedural Background:

Complainant, United States of America, through its Attorney, Weldon S. Caldbeck, Esq., filed a Complaint against Respondent, Springs Wash One, d.b.a. Austin Nevada Car Wash, on September 7, 1990. Exhibit A of the Complaint consisted of the Notice of Intent To Fine (NIF) served by the Immigration and Naturalization Service (INS) on approximately July 20, 1990. Exhibit B was the Respondent's timely request for a hearing before an Administrative Law Judge submitted by Frederic M. Wise, Esq.

On September 11, 1990, the Office of Chief Administrative Hearing Officer issued a Notice of Hearing on Complaint Regarding Unlawful Employment, assigning me as the Administrative Law Judge in this case and advising the parties of the hearing location at Colorado Springs, Colorado.

The proceeding, thus initiated in this office, involves

liability for civil penalties for violations of Section 274A of the Immigration and Nationality Act (the Act), as amended by Section 101 of the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. Section 1324a. An Amended Complaint was served upon Respondent on April 18, 1991, which added alternative violations to the allegations previously plead.

On June 24, 1991, I received a Joint Motion to Dismiss the Complaint predicated upon a Settlement Agreement between the parties. A copy of the Settlement Agreement was enclosed with the Motion. The Motion was executed by Attorney Caldbeck for the Complainant and by Attorney Wise for the Respondent on June 14, 1991.

Although the regulatory treatment of dismissals is more cursory and less rigorous than is the treatment of consent findings, 28 C.F.R. Part 68.12, nothing contained in the regulation should be understood as denying to the Administrative Law Judge the power to inquire, indeed, the obligation in an appropriate case, concerning the form and substance of an underlying agreement to obtain a dismissal.

I accept the Settlement Agreement as the predicate for dismissal of this proceeding, and not as the predicate for consent findings and a decision by me as the Administrative Law Judge.

There being no apparent reason to disturb the intent of the parties to terminate this proceeding and to remit them to a posture as if there had been no request for a hearing under 8 U.S.C. Section 1324a(e)(3), it is appropriate that I grant the Joint Motion to Dismiss in the instant proceeding based upon their notification made pursuant to 28 C.F.R. Part 68.12(a)(2).

The parties are reminded that, contrary to paragraph 18 of the Settlement Agreement, the Agreement is not effective until the case is dismissed by the Administrative Law Judge in accordance with Section 274A(e)(3)(B) of the Act.

Accordingly,

(1) The hearing to be scheduled at Colorado Springs, Colorado is hereby cancelled.

(2) This proceeding is dismissed, settled.

IT IS SO ORDERED this 25th day of June, 1991, at San Diego, California.

E. Milton Frosburg
E. MILTON FROSBURG
Administrative Law Judge

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